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LAWLESSNESS

An Address delivered before THE CIVIC FORUM
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BY
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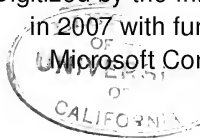
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Charles W. Eliot



Lawlessness*

Two months ago I wrote an inscription to be placed on the court house at Duluth as follows: "The people's laws define usages, ordain rights and duties, secure public safety, defend liberty, teach reverence and obedience, and establish justice." This is a great function for the law; and, if it be correctly described, the law embodies the most valuable parts of the experience of any people in its onward march towards liberty and righteousness. If this be a just description of law, what a mischief and calamity it must be for any individual man, group of men, or community to be lawless! The law does not attain its greatest dignity until it records the progress, embodies the sentiments, and expresses the resolves of a free people; and yet it is freedom which gives the opportunity of lawlessness.

We are to consider how American freedom has made possible lawlessness in many forms.

The ordinary violations of laws intended to preserve the public peace are called crimes, and the individuals or small groups of persons who commit them may properly be said to be lawless; for they commit offences against the public and private welfare which law is intended to protect. Robberies on the highways, hold-ups in city street-cars, in banks and shops, and in trains on railroads, burglaries in houses, banks, railway stations, and post offices, setting fires, picking pockets, assaults, and murders, are such crimes, which illustrate an extreme lawlessness on the part of individuals. These individuals are few in number com-

*This address was delivered at the first meeting of THE CIVIC FORUM for the season of 1908-1909. Rev. LYMAN ABBOTT, D.D., presided and introduced the speaker.

pared with the whole population; but their lawless acts in total involve immense injury to society. The material losses are very great; but worse than these losses are the perpetual apprehension and terror which these crimes cause. The defenses American society has constructed against this sort of lawlessness, though costly and burdensome, are utterly inadequate. The police force is insufficient everywhere in this country; but it is almost helpless in rural districts. The high explosives, powerful tools, and fast vehicles which applied science has furnished are well utilized by criminals; but the resources of science are not effectively used by society in its own defense. Burglars study a village beforehand, then arrive in automobiles at night, cut the telephone and telegraph wires, fasten up the outer doors of the houses near the bank, blow open its safe, snatch their booty, and are off in safety before any armed citizens can rally to attack them.

The defenses of society against criminals have been broken down. A state mounted police, with a thorough military organization, is needed in every part of our country—north, south, east, and west. The impunity with which crimes of violence are now committed is a disgrace to the country, and demonstrates the urgent need of much more effective protective forces. These forces should be provided, whatever they cost, for the credit of free institutions, which ought to prove themselves at least as competent as other governmental régimes to provide the people with security for their lives and property. It is time the American communities realized that a government which does not secure to its people order, tranquility, and immunity from criminal violence and the fear of such violence, does not deserve to be called civilized. A vigorous use of proper protective forces will require a modification of the common American ideas about local government. Now

that a motor car can run through half a dozen towns and cities in an hour, a police force which is used to operating only in one town or city will inevitably be ineffective.

Again, quick action of the courts in criminal cases is indispensable. Our protracted criminal trials with their many volumes of typewritten evidence and arguments, their unreasonable technicalities, ingenious metaphysical defenses, and possibilities of appeal and re-trial, are travesties of justice, and in practice amount to a grave public danger. They account for a large part of the increasing distrust of courts in the popular mind. The forms of lawlessness thus far considered are, however, by no means the worst forms.

A far worse form of lawlessness is the violation of law by commercial corporations. Many of these violations are not explicit, but implicit, that is, involved or implied in a course of conduct which seems fair on the outside. Thus in the commercial operation called promoting, the promoter organizes a corporation, issues a large amount of stocks and bonds which represent in real values only a small proportion of their nominal value, and then sells to a confiding public these stocks and bonds by means of false promises, and exaggerated estimates of profit. When a satisfying amount of stocks and bonds has been thus disposed of, he steps out himself, leaving the deluded share-holders to put what real value they may into the paper capital. No crime, or explicit violation of law may have been committed; but innumerable lies have been told, and many credulous people have been swindled out of their money. The operation taken in its entirety can only be described by the word "theft," although it may be quite impossible to get the courts to deal with the thief as they would deal with a man who snatched a purse in the street, or stole coupon bonds from a safe. Nevertheless, this form of larceny is more vicious and much more injurious to society than the

ordinary form. The common thief is an outlaw, and his exploits do little harm by way of example, even when they succeed. The dishonest promoter, on the other hand, does not necessarily become an outlaw, and when he succeeds, he is apt to stimulate others to attempt like iniquities, so that the ruin he works is widespread.

The public mind is often confused on this subject, because not all promoters are lawless. Some are only sanguine and ill-advised. They actually believe their own promises and predictions, and so are only chargeable with lack of good judgment or reasonable caution. Other promoters, who capitalize largely properties which look small to most people, are men of sound judgment, who have acquired at a low rate some property which has great intrinsic value as yet undeveloped, so that the real property behind the paper capital is not extravagantly represented in paper. These promoters, however, never abandon the enterprise whose stocks and bonds they have largely unloaded on the public at a great profit. They remain in the management of the enterprise, and justify by their skill in developing income from the property, their original valuation of it on paper. Such promoters increase greatly the wealth of the country, as well as their own wealth. They are men who have the good judgment, or the good fortune, first to seize on undeveloped natural resources, and then to develop them patiently and wisely. In some respects, however their early operations look like the operations of dishonest promoters, and this resemblance confuses the public mind as to promoters in general. It is a real misfortune for society that the dishonest promoter so often escapes the clutches of the law; because his kind of swindling can be, and often is, conducted without express and demonstrable violations of law. On this very account he is a peculiarly pernicious kind of lawless person.

Any man, or any corporation, who conducts his business on the edge of the law, so to speak, is morally a lawless person, though he never gets over the edge; and any person, firm, or corporation, which conducts business in this way sets a very evil example in the community. An habitual law-evader is almost as bad as an habitual law-breaker. There are some unmistakable signs that a business is being conducted illegitimately, or on the edge of the law. When, for instance, a corporation seeks quietly, and in an obscure, unnoticeable act, new legislation intended to legitimize corporate acts previously illegal, it is safe to infer that the corporation has been conducting its business in questionable ways, and is taking securities for the future conduct of its business in questionable ways. When a set of men who would naturally procure an act of incorporation in one state proceed to another, and there procure an act of incorporation, the assumption is a natural one that they mean to do in their business things which would be illegal in their own state. In the interest of the community some states impose restrictions on the conduct of corporation business which other states carefully avoid imposing. Thus one may do things under an act of incorporation obtained in Maine or New Jersey which one could not do under a Massachusetts or New York act; and yet the restrictions imposed in Massachusetts and New York are presumably for the good of those communities, and of any communities. They have been imposed by the legislatures for good and sufficient reasons. The presumption therefore is that the man, or the firm, or the corporation, that wishes to avoid these restrictions, is moved by the hope of selfish advantage to the injury of his neighbors, or of society at large. To call such a man, or firm, lawless would be going too far; but it is certain that men who thus act are not living up to the best standards of their

calling or occupation, and are not taking due account of the public welfare.

Low standards of business conduct are often justified by the statement that business cannot be conducted in conformity with lofty ethical standards, that the business man must take his choice between destroying his business, or taking advantage of the lowest standards which the law allows. If the law in one state has foolishly set the ethical standard too high, the practical man will move his business into another state where the standard is lower. Again, we cannot say of such conduct that it is lawless; but we can say that it is degrading to the man who perpetrates it, and to the community which witnesses his career, particularly if that career is successful.

It is a safe rule to suspect lawlessness in all business transactions which have to be kept secret between buyer and seller, or between agents and their principal. When, for instance, a transportation company gives rebates or other illegal advantages to one shipper, but not to all similar shippers, the act must be kept secret, because it is illegal, and the corporation which habitually does such things is justly described as lawless. Any individual or company that accepts such favors is also lawless, and the profits which result from such secret arrangement are lawless profits. If it be contended that there are businesses highly advantageous to the community which cannot be carried on except in this lawless manner, the answer is that those businesses had better not be carried on at all. When a poor creature who had committed a contemptible act said to a hard-headed philosopher in justification of it—"I must live," the philosopher replied—"I do not see the necessity." That is true of all businesses, if there are any, which cannot be successfully carried on except in lawless ways.

Much lawlessness in this country has been justified on the ground that the managers of large businesses must protect the interests of the owners by procuring favorable legislation, and preventing the enactment of unfavorable laws. This justification is usually pleaded by directors in corporations for unlawful acts of their own toward legislators or public officials. It is said, for instance, that directors must procure some wished-for legislation by any necessary amount of bribery and corruption, because the interest of the share-holders for whom the directors are in some sense trustees or managing agents requires the enactment of this legislation; and that when purchasable members of a legislature introduce laws adverse to the interests of a given corporation or group of corporations, they may properly be bought off, because, again, the interests of the share-holders require protection. In either case the proceedings of all parties to the corruption are supposed to be secret; but it is an easily penetrated secrecy. The briber and the bribed are both lawless; but the worst of the two is the briber, and so far as the quality of the lawlessness is concerned it makes no difference whether bribery is used to procure favorable legislation or to ward off unfavorable. Such conduct not only is liable to secure the enactment of unjust laws; it also impairs the confidence of the people in legislation in general. It saps the public faith in legislatures and legislators.

Another form of the same lawlessness is the hiring of members of a legislature to promote some particular agricultural or manufacturing interest, when questions of internal taxation or of tariff are under discussion in the national legislature. It is the supposition of the law that legislators under such circumstances keep themselves disinterested and impartial, because their votes are to settle the general policy of taxation to be adopted, and the special enactments

in which that policy is expressed. That any of them should become hired agents to promote the interests of any particular industry or manufacture is utterly repugnant to the law and to every principle of equity; and yet, whenever Congress engages in a discussion of the tariff, such transactions are apt to occur, and sooner or later to be revealed although they are secret at the critical time. Through such lawless operations grave injury has often been done to the national legislation, and subsequently to the moral standards of the people, and to their faith in the honor alike of the legislators and of the leaders in great industries.

A peculiarly deliberate form of lawlessness is exhibited when corporations or large combinations of men for business purposes, foreseeing that they shall shortly wish to commit illegal acts, procure beforehand protection against prosecution for illegitimate practices by means of legislation apparently innocent, but really designed to intrench in their control of trust institutions speculative and immoral officials, or to prevent convictions for criminal violence not yet perpetrated, but to be perpetrated. A familiar example of the first form of lawlessness is the 56th Section of the New York Insurance Law which made it impossible for policy holders to bring suits against their Company without the consent of the Attorney-General. This Section defended from attack by policy holders a small number of executive officers and speculating directors who wanted to use the policy holders' money for their own advantage in stock and bond speculations.

Another interesting form of lawlessness is defeating the purpose of a law to one's own advantage without actually violating the law,—for example, by paying for a patent, and then pigeon-holing it, so that neither the purchaser nor anyone else can use the patent. Now a patent is an absolute monopoly granted by a government for a limited

period; and the object of the grant is to promote useful inventions, and the consequent progress and improvement of industries. When a patented invention is not used, the national industries lose all advantage from it, although the inventor may have profited somewhat by the sale of his invention. The purpose of the law to stimulate invention may have been partially answered, though not in the manner intended; but the purpose of the law to improve an industry has been completely defeated. So obvious is this defeat of the law-making power by such action on the part of an individual interested to keep things as they are, and so serious may be the consequences of this mode of defeating the patent law, that the English Government and most European governments have provided that a patent not used within a reasonable time shall cease to be valid. American law provides no adequate security against the substantial defeat of the main purpose of the legislature in granting patents. Legislation to grant perfect monopolies is at any rate highly exceptional, so that both patents and copyrights have always been granted for strictly limited periods; and, considering the antipathy of freedom-loving peoples to monopoly in general, it is remarkable that in the United States it should still be possible to maintain a monopoly of which for selfish reasons no use is made. To hold and hide a monopoly right for selfish reasons is to defeat the intended beneficence of an exceptional law. Whether such conduct is better or worse than violating a law is an ethical question concerning which conscientious men might differ.

One of the greatest inventions of the 19th century was the invention of incorporation with limited liability. This invention is hardly sixty years old; but it has had a prodigious effect on modern industries, trade, and commerce. It permits the massing of the savings of a large number of individuals to provide the capital for the conduct of a large

business which can be carried on by a few directors, with an appropriate number of managers and foremen, in the common interest of the share-holders. The foundation of the whole structure is the common equal interest of all the share-holders. If profits accrue they are to be divided at the same rate among the share-holders; if losses ensue they are to be borne by all equally; and in the choice of the directors or managers each share-holder is to have his own proportional equal right. In spite of the fundamental justice or righteousness of this arrangement, and its enormous value to the community as a whole, some insidious forms of lawlessness have crept into the management of corporations. One of these forms of corporation lawlessness is the selling of the control of the stock by a group of directors without the knowledge of the share-holders, and without giving the minority of the share-holders the opportunity to share in the profits of the sale. In this manner the directors or managers of the corporation may be changed in a way to affect greatly the value of the stock, and yet the minority of the stock-holders may have had no opportunity whatever to protest against the change, or to take the action which their judgment dictates in view of the coming change. Equitably considered this is a violation of the fundamental principles on which the law of incorporation rests, and yet in such a transaction the law may not be actually violated in the sense that the violators subject themselves to criminal prosecution. Nevertheless, such conduct on the part of directors or managers has all the ill effects of violation of law in damaging the moral sense of the community, and the sense of honor among the leaders of the business world. It is only fair to say that in respect to such transactions there has been great improvement within a few years in the acknowledgment of the honorable obligations of directors and managers, and that the

knowledge of the duties of trustees, as understood in law, has been diffused among business men to an extent before unknown. Indeed, one may say that five years ago many leading men in large affairs had no correct view of the duties of a trustee, and no appreciation of the fact that directors and managers in corporations were in a proper sense trustees for their share-holders. Many a firm and many a board of directors would not think of doing to-day things they habitually did five years ago. The public scandals and disasters in the business world during the past few years have proved in a high degree instructive in regard to those lines of business conduct which the law and the sentiment of honor alike condemn.

The next unlawful process to which I propose to refer is the secret defeating of competition, when competition is asked for, and is indeed necessary to the legal transaction of the business in hand. The owner of land, on which a building is to be placed, advertises for competitive bids on the plans prepared by his architect; or a city, for which a bridge is to be built, advertises for bids for the construction of the bridge on the designs of the city engineer. Instead of making independent bids on the work, a number of building firms or corporations enter into what the law calls a conspiracy to defeat the legitimate object of the owner or city. They agree among themselves which one of them shall have the job, and therefore which one shall put in the lowest bid, the rest of them putting in higher bids, and they further agree that the firm or corporation which does the work shall pay a part of his profit to each of the corporations or firms which put in the higher bids, or shall pay a lump sum at the start to each of the corporations which agree not to get the job. This kind of conspiracy results, in the first place, in an unreasonable price for the work to be done, to the injury of the owner

of the land, or of the city; and in the next place it is the defeat of a perfectly legitimate competitive method of doing business, a method which is necessary in a great variety of trades and industries, and which is commanded by law in regard to the transaction of much public business—national, state, or municipal. It is noticeable that many firms and corporations called respectable have used this lawless method, and when detected in it have defended the method. Convictions in court have, however, given public demonstration of the lawless quality of this sort of conspiracy, and the wholesome publicity given to transactions of this nature has satisfied everybody that there was very good reason for the secrecy with which they were always conducted.

Some faint justification for this lawless conduct in recent years may perhaps be found in the very general outcry against competition which has pervaded of late the industrial, educational, and philanthropic world. All sorts of people, indeed, have talked about competition as an unqualified evil, which was everywhere to be resisted and condemned. So business men, who ought to have known better, may have thought that it was not wholly unrighteous to defeat the attempt to award contracts on competitive bids. Now the fact about competition is that it is not only the life of trade, but the great means of improvement not only in industries, but in the development of personal character. Competition is the great revealer to a man, or to a nation, of his own power and capacity. To know one's self is impossible without active competition with other people. A nation protected from competition will soon prove itself a stagnant, unprogressive nation, rich and strong perhaps, so long as its abundant natural resources are not fully utilized; but sure to decline when its further progress comes to depend on the trained skill and capacity

of the population as a whole. In family, school, and college, competition and emulation are the great animating and stimulating forces, wholesome and effective in the highest degree. It is just so in the great industries. To defeat competition, therefore, is to inflict a serious injury on society at large.

We have thus far been considering chiefly corporation lawlessness, which is ordinarily lawlessness on the part of single men, or small groups of men, who are managing corporation business. We come now to another sort of lawlessness—the violence of large combinations of men in prosecution of their pecuniary interests, or in resistance to wrongs they suffer actually or in prospect. Under this head come the lawless acts of trade-unions in pursuit of higher wages, shorter hours, or better conditions of work. The violence which ordinarily accompanies a great strike in a trade which employs many thousands of workmen is of the plainest and most elementary character. It consists of assaults with intent to kill or disable, either for the moment or permanently, of the destruction of property by explosives or by fire, of intimidating marches in great numbers and often at night, and of many less open, but equally formidable efforts to frighten into acquiescence non-union men and their families. No one doubts that all these actions are utterly lawless; but no one expects that the unions concerned will take any measures whatever to prevent such violence, or to punish it by their own action when committed by their members. The community at large not infrequently sympathizes with the demands which the strikers are endeavoring to enforce. It seldom sympathizes with the violence used to enforce the demands. Occasionally the majority of the people seem not to object to the destruction of property, particularly the property of a transportation company; but they are generally offended by

violence directed against persons, particularly if it is murderous violence, or reaches women and children. Sometimes the unions or their leaders nominally object to violence; but they never assist the public authorities in their efforts to prevent it. For this policy they may reasonably claim certain justifications. In the original resistance of the unions to unreasonably long hours, very low wages, and barbarous conditions in the places of work, the contention inevitably became that of warfare. Violence was inevitable. It was a downright fight which the unions entered into, and success was only to be won by sanguinary and destructive methods. To be sure, this condition of things long since passed away; but its influence survives. Hours are no longer unreasonable, wages are fair, or high in most industries, and the physical conditions under which wage-earners labor have been in most industries greatly improved. Collective bargaining is an admitted improvement in many industries, and the right to strike is universally recognized. Nevertheless, lawless violence has repeatedly occurred in the American cities within very recent years in support of strikes, and much of it has been committed with impunity. Often in recent years, but seldom during the past year, it has seemed to have contributed to the success of the strikers. It is proper to point out that under the new circumstances violence to procure higher wages is violence on behalf of a purely pecuniary claim. It is not to be compared with violence in resistance to grave oppression and intolerable conditions of labor. It is violence to get more money, and is on that account a peculiarly offensive form of lawlessness.

In another respect the unions persist in methods which were originally necessary, but are no longer even defensible. Thus they insist on the secrecy of all their preparations for striking, and on the absolute suddenness of the strike, so

that the employer shall have no warning. These are sound methods in actual warfare; but they are wholly unnecessary to-day, and they are very destructive to the industrial interests of society as a whole. Violence secretly prepared, and breaking out suddenly, is a peculiarly objectionable sort of violence in civilized society. An incidental result of this policy is to induce manufacturers who employ union labor to keep in their service spies upon the proceedings of the unions, a practice which emphasizes very much the warlike relations between capital and labor. Society at large justly distrusts all secret organizations, and movements planned in secret. It objects alike to secrecy in the trade unions, and in the boards of directors. It particularly distrusts and dislikes secrecy in any part of the operations of a corporation which deals with public utilities. It not unreasonably apprehends that action which must be kept secret will prove to be lawless action.

This inevitable apprehension, so often justified by experience, has suggested the real remedy for the violence accompanying industrial disputes. The remedy has been successfully put into the form of law in the Canadian Act for the Investigation of Industrial Disputes, an Act which forbids strikes or lockouts prior to an impartial investigation of the causes of the dispute. This beneficent act has now been in operation for twenty-one months, and its success in preventing and settling strikes and lockouts without violence and without any arbitration, either voluntary or compulsory, has been remarkable. The Act relies solely on publicity obtained through a tribunal, the appointment of which either party to a dispute may procure.

Lynching is another form of violence which is precisely described by the word "lawless." It argues the absence of an adequate police force, a lack of confidence in the prompt administration of justice by courts, a liability to gregarious

rage in the ignorant part of the population, and often the existence of an intense racial antipathy. The barbarous cruelty and the indifference to the risk of killing the innocent, which characterize lynching, demonstrate that its worst effects are upon the lynchers, except, indeed, in some revolutionary crisis, when all the bonds of society are loosened, and laws are silent amid arms. A population which frequently, or habitually, resorts to lynching as the punishment of alleged crime, makes public confession that it is a barbarous population, or that its barbarous elements are not controlled by its civilized elements. This demonstration is complete and unanswerable. The causes of the degradation being moral causes, the remedies for it must be the slow-working influences of education, steady productive labor, and a gradually acquired respect for laws, courts, and the protective forces of society.

Another illustration of the readiness with which a portion of our people may take to lawless violence has been given by the night-riders who lately harried large portions of the States of Kentucky and Tennessee. This seems a form of violence copied from the Ku-Klux-Klan which terrorized the negro population of the south during a bad part of the deplorable "reconstruction" period. The object of the night-riders was to destroy young plantations of tobacco, and prevent the sale of tobacco below a price fixed by an extensive organization of tobacco growers, which had been created to prevent the Tobacco Trust from buying tobacco at a price determined by the Trust. Resistance to an oppressive monopoly was at the bottom of the movement; but the movement availed itself extensively of lawless violence in order to accomplish its objects. It was a case of strong combination fighting strong combination, but by unlawful means. It relied on a widespread opinion that to kill a few people, whip many, burn barns, and scrape

newly planted fields, was a trifling evil compared with the selling of tobacco to the Tobacco Trust at a price below what the tobacco growers thought "a living wage." The night-riders have finally won remarkable success. Their tobacco has been sold at a price higher than they ever demanded during the long period of their lawless operations; and on this account the harm they have done to the States in which these outrages took place is all the deeper, and will be the harder to cure. They have exhibited lawlessness unpunished, and triumphant. They have taught all the young people in the counties affected that might makes right, that personal liberty is insecure, that law and order may be defeated with impunity by a disguised mob operating in the darkness, and that in the pursuit of money many men combined may absolutely disregard and trample under foot those rights of the individual to life, liberty, and the pursuit of happiness which American civilization professes to protect.

The worst effect of night-riding, like the worst effect of lynching, is the barbarizing of the men who do the violence. This is always the worst effect of organized and extensive lawlessness, particularly when the lawless work is planned in secret, and executed at night and in disguise. In such dark work there is something peculiarly appalling to the community affected, and peculiarly degrading to the men who take active part in it.

Lawlessness in connection with political office and government administration is the next phase of this great evil which we ought to consider. The buying of public office is a pernicious form of this lawlessness. Senatorships, collectorships, and even judgeships are sometimes paid for outright, and without disguise, either at the stage of nomination or at that of election, by contributions to party funds or by money payments direct to persons who control the

nominations or the elections. Cases have repeatedly occurred in our country in which the notorious purchase of office had apparently no effect on the political or social standing of the purchaser, or, more accurately, in which the purchaser was never sensible of any ill effect on his career. Yet the fundamental principles of republican government could hardly be more grossly offended, or more meanly betrayed, than by such conduct. Another form of lawlessness is the use of public salaries to advance personal interests, which was frequently done without shame under the régime of patronage. The maxim "to the victors belong the spoils" is a war maxim and a war practice. In Roman times, in Medieval times, and even in times so recent as the capture of the Imperial Palace at Peking by the Allied Armies, the spoils of war meant something very real and often very valuable. Political spoils have also been very real in our country, until civil service reform made headway enough to limit seriously the spoiler's opportunity. The whole business of using public places to reward political service is really as lawless as the looting which a victorious army perpetrates in time of war, particularly in wars between a so-called civilized state and a barbarous one.

A well-known politician who had had experience in city, state, and national administration once asked me if I knew what the vice of politicians was. On my professing an uncertainty on that point, he said, "Stealing, just plain stealing." When we read about the robbing of cities by their own officials through rake-offs on contracts, commissions on purchases and payrolls, padded payrolls, and bribes for votes against the city's interests, we sometimes feel as if this experienced politician's verdict were absolutely correct. When we read of officers of the law, whose duty it is to repress and punish vice, habitually collecting from the

haunts of the worst vices large sums of money paid for protection, we feel as if lawlessness could go no farther, as if we had really reached the bottom of the pit. Surely there is no worse lawlessness in any part of our country than that developed by dishonest governments in great cities.

Again, governmental agencies themselves have often fostered lawlessness. Thus states have under-bid other states in offering easy terms of incorporation, in order to reap money from the fees charged for acts of incorporation and charters, and have not stayed their hands because they knew that easier terms of incorporation than neighboring states offered meant opportunities for dishonest men to defraud the community. Executives have complained of court decisions, and have reproached judges for giving decisions contrary to the policies of the executives. Courts have been packed by executive appointments in order to procure subsequently from those same courts decisions in conformity with the wishes or opinions of the executives. Courts themselves have contradicted each other, have given decisions on technical grounds without expressing an opinion on the merits of the case, have divided as evenly as possible on important questions and have brought courts into contempt by long delays, by reversals of judgment, and by multiplied appeals from court to court. Whenever through any of these causes failures of justice occur, the courts are brought into contempt, and the spirit of lawlessness is fostered.

Society at large must bear the chief responsibility for lawlessness. It neglects to provide the protective forces necessary to secure order and peace. It permits lawless persons to carry on with impunity their operations against

the public welfare. It fails to educate the children in reverence and obedience, and to inspire them with the love of liberty under law. It declines association with burglars and forgers, but not with dishonest promoters, corrupt officials, and lawyers who teach their clients how to evade laws. Under free institutions the law-breaker and the law-evader cannot allege that law and government have cruelly oppressed him, and that they are only wreaking a just vengeance on society at large. The victims of a despotic government may sometimes have to rebel utterly and ferociously against all law; but this state of mind is impossible in such a republic as ours.

We have thus surveyed a series of phases of one great evil which has long manifested itself, and still manifests itself, in our free American society, among the educated and the ignorant, the rich and the poor, the dwellers in cities and the dwellers in the country alike. Some forms of the evil are old and some are new. Some were prevalent in societies much older than ours, some seem to have been invented or rediscovered on this soil. Is then American society improving or deteriorating in respect to reverence for law and obedience to it? No intelligent American who has studied his fellow-countrymen during the past sixty years can hesitate to say, in reply to this question, that American society has greatly improved in this respect, not steadily, but by spasmodic advances, and has made specially large gains during the past twenty years. The means of progress have also been made plain. They are education in home, school, college, and church, the habit of regular industry, the amelioration of industrial strife, the general disuse of alcoholic drinks, resistance to all forms of political corruption, the establishment of pure and efficient government in city, state, and nation, and the steady inculcation

of the ancient precept that righteousness alone exalteth a nation, and of the Christian doctrine that material prosperity, and public happiness alike may be best promoted by the universal practice of goodwill.

Questions and Answers

At the close of the address, the questions from the audience and answers by the speaker were as follows:

Question. Why should it be considered praiseworthy and patriotic for the Boston Tea Party to destroy other people's private property—tea—while in our own present day the night-riders are equally lawless and criminal, and when they are analogous to their Boston ancestors in destroying their neighbors private property—tobacco?

Answer. I was brought up to think that the work of the Boston Tea Party was a patriotic one. Doubtless it was a completely lawless one; but it was a lawlessness that preceded war. It was one of the symptoms that war was coming, and it actually did precede war. Surely there is an infinite difference between the object of the Boston Tea Party and the object of the night-riders. In the first place, the Boston Tea Party was not working for any money profit to themselves. (Applause.) They had no tea to sell. (Applause.) The night-riders committed their acts of violence in order that they might succeed in selling their tobacco at a higher price than had been offered them by the Tobacco Trust. I think we all see, ladies and gentlemen, that there is no justice in this comparison. The men who threw the tea into the harbor at Boston would have been very glad to have drunk some of that tea themselves. They were, I say, working for no pecuniary object whatever. What they were resisting was a tax on tea. They had a public object—resistance to a taxing power which they deemed to be wholly alien and illegitimate. That was a public object. The night-riders in Kentucky and Tennessee used cruel violence, in order that they might get from the Tobacco Trust, or somebody else, a higher price for the to-

bacco they had stored. I believe I have answered that question.

Question. Would woman suffrage tend to promote obedience to laws in the United States?

Answer. That inquiry does not seem to me to be strictly relevant to the discussion of lawlessness. Nevertheless, I will say, briefly, that I do not discern any experience in any part of the world which sheds any light upon the answer to that question. One would have supposed that the addition of multitudes of women to the lists of voters might have some pacifying effect upon political and industrial struggles; but so far as the experience of the world goes,—I confess it does not go far—women have taken a very active and violent part in most industrial strife. One hundred years ago, when the English unions were beginning their warfare, the women were fully as fierce as the men; and we know how often that is the case to-day. Ladies and gentlemen, are the Suffragettes lawless? (Applause.) They broke the windows of the Prime Minister in Downing Street. They made demonstrations about Westminster which were not, to be sure, very effective, but still, so far as they went, they were disorderly. (Applause.)

Question. Do you approve of that provision of the Immigration Law which compels a foreigner to answer the question: "Are you an Anarchist"?

Answer. That question has some relevancy, because part of the Anarchists in Europe are men of violence. The philosophical Anarchists disclaim all destructive and violent intention or action; but there is another part of the Anarchist party that may fairly be called men of violence. I understand this question to be "Is it expedient to ask every man who looks like an Anarchist, when he arrives in this country, the question, 'Are you an Anarchist?'" It never seems to me expedient, either in college or in the larger world, to pass a futile regulation, which cannot have any real effect. When I became President of Harvard College forty years ago I found in existence what the students called "The College Bible." It was a pamphlet of about forty octavo-pages, of rather fine print, containing regulations and par-

icularly the prohibitions which were laid upon the students. Before long that collection ceased to exist; it was wholly useless; it was worse than useless, because most of those regulations could not be executed by any means at the disposition of the executive. Now this law, concerning which this question is asked, is just such a law, which cannot be executed in any effective manner. Of course, criminal Anarchists, men of violence, really dangerous persons, feel themselves to be at war with society; and they are going to use all the methods of war—deceit, disguises, concealments, surprises, and ambuscades. Is such a man going to answer the question truly, and say, "Yes, I am an Anarchist?" Far from it. As to the innocent Anarchist, the philosophic Anarchist, he might hesitate to answer no; but he is conscientious and peaceable, and might just as well come into our country as not. I therefore feel that it is inexpedient to ask such a question of incoming immigrants, and I believe the law itself which commands our officers to ask that question, is an inexpedient law.

Question. How can you reduce the desire of the public to keep the lawmakers busy?

Answer. I am not sure that the public does desire to keep the lawmakers busy; but for the reply to this question I shall have to assume the existence of this desire. In most of our States, the legislators meet once in two years. In Massachusetts we have the privilege of an annual meeting of the Legislature, and it generally sits about six months. A portion of the public is always desiring new laws, and are not wholly without justification, for the reason that our industries, our social life, the condition and habits of the people, and the quality of the population as regards race and religion have all been changing with prodigious rapidity; and, therefore, new laws in considerable number are really needed. Every two years the activities of the legislators may be well directed; because in many cases, though not in all, they are really trying to accommodate the laws to new conditions. I will take but a single example of new conditions. Within the last fifteen years our mode of thought concerning individual rights over against collective rights, has changed greatly. We have changed some of our tra-

ditional views about the rights of individual ownership in land, for example, of the sanctity of the individual's house, farm, or grounds. We have had to reconsider the right of an individual to his own habits, his bodily habits even. I know that in Massachusetts a large number of laws had to be passed in order to give collective right the control in many instances over individual right. There is one great cause for the multiplicity of new laws. Our densely crowded communities have been brought together very suddenly, and numerous new evils have arisen; and new laws result from the effort of society to counteract new evils which this density of population has created. To meet new evils legislators have many and many a time been obliged to disregard old and highly valued individual rights. For instance, we have had in Massachusetts lately a good deal of legislation on insect pests, and we have had a good deal of legislation to prevent the spread of tuberculosis. This legislation is all good; but in regard to those subjects it has swept away many highly valued, old individual rights. You cannot kill off the brown-tailed moth on the principle that every man is sovereign in his own estate. Far from it. Every individual owner must be compelled to clean his grounds; else the brown-tailed moth will triumph over man and his communities. Any single-minded worm is too much for man. (Applause.) We used to think in Massachusetts that we might spit wherever we pleased; but that individual right is lost forever. There may be too many laws proposed or even enacted; but my view is that in many instances new laws are absolutely required for the preservation and defense of society against new evils and for the accommodation of social action to new conditions. (Applause.)

Question. Does it not seem to you that juvenile lawlessness is markedly on the increase in America, and if so, what remedies do you propose?

Answer. I ought to confess at once that I have had little personal observation of this supposed increase of juvenile depravity. The young men with whom I come in contact are somewhat older than the juvenile class to which this question refers; but I really do not believe that there is any

real difference of tendency between the students that I see and the younger boys who are going to primary and secondary schools, except that those boys who go on to the higher education are in some sense picked, or select youth. Juvenile depravity is supposed by some persons to be the natural outbreak in freedom of a nature depraved by long inheritance. On the other hand, I suppose it to be the consequence, the natural and inevitable consequence, of the bad conditions under which some boys grow up. It is society's fault, not the boys' fault that they grow up under such conditions. I suppose none of us realize how utterly inadequate the means of education for boys and girls are. I printed, a few years ago, three lectures which I gave one autumn at Teachers' Institutes, and entitled the little book "More Money for the Public Schools." It had a very, very small circulation. Nobody was interested in spending more money on public schools. But yet the expenditure on schools in our country is deplorably small, even in those communities that spend most, like California, for example. In New York City, the average expenditure is high relatively to the expenditure of the country at large, but nowhere does the expenditure for schooling equal that which must be made in lodging and feeding a child. That is not as it should be. Moreover, we have been extraordinarily ignorant and thoughtless in regard to the means of stopping a criminal career in boys. Judge Lindsay of Denver has opened a campaign of improvement; but that makes but slow progress, when we consider how many millions of boys there are who need to be better controlled and directed. I do not know whether juvenile depravity is on the increase or not. I know there is a great deal too much of it, and that that is the place where the community ought to take hold hard to prevent and uproot evil. (Applause.) It is very little use to deal with adults, except to provide them with regular work, but there is infinite advantage in dealing with the young.

Question. Is not the multiplication of laws a proof of weakness in the State?

Answer. The multiplication of laws? I suppose that means the producing of many laws instead of promoting the

interests of society by a few laws which lay down great principles. If we refer to special acts relating to single individuals—for instance, to the Pension acts which go through Congress by thousands each pensioning an individual—if we refer to special charters for institutions or corporations instead of to general laws under which any institution or any corporation may be set up as a legal person, then the multiplication of laws may perhaps be extreme in our day; but I think the way to avoid those laws has been made known, and that many American legislatures have taken steps to prevent the multiplication of special acts, and to secure acts covering large ground, or general uses, in the place of multitudes of special acts. But, as I have already said in reply to another question, if the multiplication of acts or laws means that legislators are honestly trying to provide positive means of righteous action, or are endeavoring to cut out one evil after another by the roots, then we may easily believe that the multiplication of acts, which we see going on, has strong advantages for the modern State. I, of course, do not know to what sort of multiplication of acts this question alludes; but I think the multiplication of acts in itself does not prove weakness in a State. The multiplication of certain kinds of acts is inexpedient; but the multiplication of certain other kinds of acts is highly expedient and beneficial. People complain very much that legislatures sit long in these days; but there is often very good reason for the length of sessions. A legislature needs time to examine the multitude of bills proposed, and by a long session is enabled to make thorough examination, and to throw out a large number of the bills proposed. It is also able to improve the bills which, in general, it thinks hopeful. Moreover, in these days, there is a reasonable readiness to repeal acts which show themselves to be unnecessary or hurtful; some time must be allowed for that process, which is often a very helpful one. It is my opinion, therefore, that this question cannot be given an explicit and unqualified answer: but I am inclined to deny that the multiplicity of acts is in itself a demonstration of weakness in the State.

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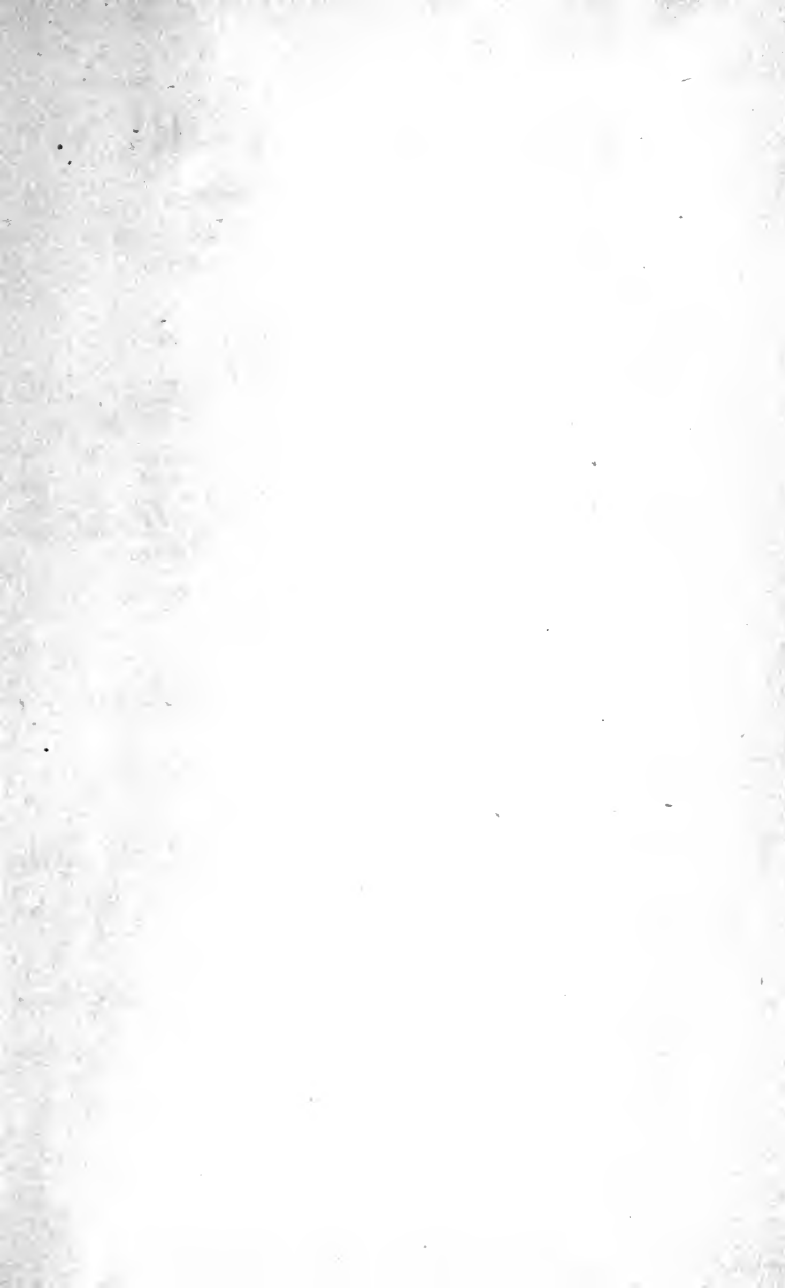
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